



**MINUTES
FREMONT PLANNING COMMISSION
REGULAR MEETING OF FEBRUARY 26, 2004**

CALL TO ORDER: Chairperson Weaver called the meeting to order at 7:00 p.m.

PRESENT: Chairperson Weaver, Vice Chairperson Wieckowski, Commissioners Harrison, Lydon, Natarajan, Sharma

ABSENT: Commissioner King (excused)

STAFF PRESENT: Jeff Schwob, Interim Planning Director
Larissa Seto, Senior Deputy City Attorney II
Christine Daniel, Deputy Director of Development Environmental Services
Wayne Morris, Associate Planner
Brad Tarr, Associate Planner
Alice Malotte, Recording Clerk
Chavez Company, Remote Stenocaptioning
Walter Garcia, Video Technician

APPROVAL OF MINUTES: Regular Meeting of February 12, 2004 approved with the following corrections:
Page 5, first line: "community" misspelled
Page 21, Sharma's statement "A three or four hundred thousand-dollar home . . ."

CONSENT CALENDAR

THE CONSENT LIST CONSISTED OF ITEM NUMBERS 1 AND 3.

IT WAS MOVED (WIECKOWSKI/HARRISON) AND UNANIMOUSLY CARRIED BY ALL PRESENT THAT THE PLANNING COMMISSION TAKE THE FOLLOWING ACTION ON ITEM NUMBER 1:

Item 1. BACCARAT RAILROAD LLC – 41075 Railroad Avenue – (PLN2000-00059) – to consider an appeal regarding the completeness of an application for a Preliminary Grading Plan and an Initial Study and to consider a Preliminary Grading Plan for a 15-acre site zoned I-L Light Industrial located in the Irvington Planning Area. (Continued from January 22, 2004.)

CONTINUE TO APRIL 8, 2004 OR THE NEXT REGULARLY SCHEDULED MEETING THEREAFTER SHOULD THE APRIL 8TH MEETING BE CANCELED.

The motion carried by the following vote:

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| AYES: | 6 – Harrison, Lydon, Natarajan, Sharma, Weaver, Wieckowski |
| NOES: | 0 |
| ABSTAIN: | 0 |
| ABSENT: | 1 – King |
| RECUSE: | 0 |

IT WAS MOVED (HARRISON/WIECKOWSKI) AND CARRIED BY THE FOLLOWING VOTE (7-0-0-0) THAT THE PLANNING COMMISSION TAKE THE FOLLOWING ACTION ON ITEM NUMBER 3:

Item 3. PACIFIC COMMONS – Southwest corner of Auto Mall Parkway & Christy Street - (PLN2004-00159) - to consider a Finding architectural approval for two retail buildings to be located at the southwest quadrant of Auto Mall Parkway and Christy Street in the Industrial Planning Area. An EIR and Supplemental EIR were previously approved for the Pacific Commons project. An Addendum was prepared and adopted for the Planned District Major Amendment, finding the project to be consistent with the original plan and EIRs.

HOLD PUBLIC HEARING;

AND

FIND THAT THE EIR AND SUPPLEMENTAL EIR PREVIOUSLY APPROVED FOR THE PACIFIC COMMONS PROJECT, AND THE ADDENDUM ADOPTED FOR THE PLANNED DISTRICT MAJOR AMENDMENT ARE CONSISTENT WITH THE ARCHITECTURE PLANS FOR P4 & P5 WHICH IMPLEMENT THE PLANNED DISTRICT MAJOR AMENDMENT AND THAT NO FURTHER ENVIRONMENTAL REVIEW IS REQUIRED;

AND

FIND PLN2004-00159 IS IN CONFORMANCE WITH THE RELEVANT PROVISIONS CONTAINED IN THE CITY'S EXISTING GENERAL PLAN. THESE PROVISIONS INCLUDE THE DESIGNATION, GOALS, AND POLICIES SET FORTH IN THE GENERAL PLAN'S LAND USE CHAPTER AS ENUMERATED IN THE STAFF REPORT;

AND

APPROVE PLN2004-00159, AS SHOWN ON EXHIBIT "A", SUBJECT TO FINDINGS AND CONDITIONS ON EXHIBIT "B".

The motion carried by the following vote:

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| AYES: | 5 – Harrison, Lydon, Sharma, Weaver, Wieckowski |
| NOES: | 0 |
| ABSTAIN: | 0 |
| ABSENT: | 1 – King |
| RECUSE: | 1 – Natarajan |

PUBLIC COMMUNICATIONS

ORAL COMMUNICATIONS

PUBLIC HEARING ITEMS

Commissioner Natarajan recused herself from the following item, because she worked with the consultant who was involved with this project.

Commissioner Harrison stated that, regarding the following item, he had met with one of the applicant's agents at the site to review some of the signage issues.

Item 2. PACIFIC COMMONS FREEWAY PYLON SIGN - SW Quadrant of I-880 & Auto Mall Parkway - (PLN2004-00142) - to consider a Planned District Minor Amendment to modify the freeway identity pylon sign for Pacific Commons Major Retail Development in the Industrial Planning Area. An Addendum to the adopted EIR and Supplemental EIR has been prepared per Section 15164 of the 2004 CEQA Guidelines.

MODIFICATION TO STAFF REPORT

Fourth paragraph under Project Analysis:

Response from Agencies and Organizations: Due to the height of the proposed sign, the applicant was required to seek approval from the Federal Aviation Administration (FAA). The applicant informed staff that the FAA's approval was granted on February 13, 2004 with a determination of "no hazard". With respect to the location of the proposed sign, PG&E sent a letter to the City dated December 23, 2003 indicating that no portion of the sign or footing would be permitted within the PG&E easement in that area. The applicant has subsequently informed staff that PG&E has indicated its approval of the height of the sign. ~~and the applicant has indicated that no portion of the sign encroaches into the PG&E easement.~~ The applicant has stated it will provide written evidence of this prior to the Planning Commission meeting. Staff will provide copies to the Commission upon receiving the information from the applicant. Additionally, a condition of approval is included in Exhibit B addressing this situation as follows: "The location of the pylon sign shall be as shown on Exhibit A only if one of the following occurs: (1) The City receives written approval from PG&E that the structure may be located in PG&E's easement, or (2) The City receives written evidence of a relocation of the PG&E easement such that the sign structure does not encroach into that easement...."

Addendum to Exhibit "B". (Corresponding condition numbers to change.)

2. The freeway pylon sign shall not be located within the Alameda County Water District easement which is located adjacent to the proposed sign location.

ADDITIONAL INFORMATIONAL ITEM

Correspondence from Federal Aviation Administration dated 2/13/2004 to Sean Whiskeman of Catellus regarding the Determination of No Hazard to Air Navigation.

Correspondence and pylon sign area location map from Pacific Gas and Electric Company dated February 24, 2004 to Mr. Jason Johannessen of Catellus regarding Pole Line Easement.

Dan Marcus, Catellus Development Corporation, thanked the Commissioners for their approval of Item 3. Eighty percent of the buildings were in the building permit process and were on target. They hoped to begin construction within three weeks and hoped that most of the stores would be open for the upcoming holiday shopping season. He noted that one of the color renderings showed a glimpse of one of the approximately eight, bronze sculptures (7 to 15 feet tall) that would be scattered throughout the center. He was asking for approval to increase the height of the pylon sign from 90 feet tall to a maximum of 152 feet and to move the original location to the other side of the first row of buildings closer to the freeway. Balloons had been floated to simulate the original height of 90 feet. It seemed very small, compared to the nearby PG&E power line towers, which would dominate it. The original location was far removed from the freeway, behind the other buildings and was dominated by the PG&E towers, which were about 170 feet tall.

Commissioner Sharma asked the pylon height difference between it and other center signs along the freeway.

Mr. Marcus replied that the pylons for Union Landing were 90 feet tall, which was the original planned height for this pylon. As mentioned above, site constraints suggested that a taller pylon was needed. Mature 40-foot trees were nearby and the retail signs had to start no lower than 40 feet from the ground.

Vice-Chairman Wieckowski stated that 152 feet, 60 feet higher than Union Landing, seemed “enormous.” Why did every major retailer have to have its sign on the pylon? These pylons “become a totem pole of advertising.” It seemed that ten retailers with a five-foot sign each could not justify a pylon of 150 feet. Originally, a different type of architecture, atmosphere, and retailer was planned. The City was particular about corporate signage within the City. He asked if the consumer’s eye could not be “caught with something understated.” He worried that the community would be shocked when seeing a pylon that tall.

Mr. Marcus replied that all retailers of significant size required their names on signs for large retail centers. This pylon would be very elegant, tapered, a nice architectural feature. The retail signs would hang from it in “a very interesting way.” Ten signs would be needed for the ten major tenants and, as mentioned, starting at 40 feet from the ground. Each sign would be four feet high with one foot between signs, which would be almost half the size of the Union Landing signs, which were seven feet high. The final 50 feet of the pylon would be very tapered, which would make it very thin, very air-like, and very elegant. “Trust us, it’s going to be a nice sign.”

Vice-Chairperson Wieckowski asked how the shape of the pylon sign would tie into the two gateway concepts.

Mr. Marcus stated that the retailers wanted monument signage on Auto Mall Parkway and at the gateway. He hoped they understood that, because of the significant pylon sign, there would be no retail monument signage at the gateway. He pointed out a color rendition of one of the monument signs that was flat and low with high-end landscaping and a public plaza area on the other side of it. The same Pacific Commons lettering that could be seen on the monument would also be used at the top portion of the pylon, along with similar coloring and materials.

Commissioner Harrison asked if the pylon height decision was arbitrary and how high the PG&E towers were. He reiterated that he had met with the applicant to review the design of the pylon. From what he had observed, the pylon seemed more like a sculpture. He believed the pylon would mirror the retail and restaurant quality expected to locate within this center. He agreed that the signage had to be seen to bring people into the center.

Mr. Marcus replied that the Union Landing height was originally thought to be appropriate and the height was not necessarily an arbitrary decision. The PG&E towers were approximately 170 feet.

Commissioner Sharma asked if some of the trees could be trimmed to allow a cleaner view of the pylon.

Mr. Marcus agreed to approach the adjacent property owners to instigate some trimming.

Commissioner Lydon reminded the Commissioners and the public that the sign needed to be seen from a half mile away. Fifty feet taller did not seem to be that negative or offensive.

Chairperson Weaver opened and closed the public hearing.

Vice-Chairman Wieckowski asked if advertisement along the freeway could be done with individual, small, low to the ground signs before the exit to Pacific Commons, similar to what was allowed in the State of New Jersey. He asked if the added height would need further analysis to determine the visual impact to the area

Deputy Director Daniel replied that the pylon sign was consistent with the idea approved in the concept plan for this planned district. No other kind of signage had not been analyzed.

She recalled that a 12-story hotel had been approved on this same parcel and the environmental assessment for this application concluded that there was no change in the circumstances.

Chairperson Weaver recalled approving a higher sign for Mowry East Center. She asked how high it was.

Interim Planning Director Schwob recalled that the sign was increased 15 feet in height and it was comparable to the sign at New Park Mall, which was either 65 or 85 feet.

Commissioner Sharma supported the size of the sign; it needed to make a larger impact than the PG&E power poles. Because Pacific Commons was an excellent project, he believed that the pylon design would also be outstanding.

IT WAS MOVED (HARRISON/SHARMA) AND CARRIED BY THE FOLLOWING VOTE (4-1-0-1-1) THAT THE PLANNING COMMISSION **HOLD PUBLIC HEARING;**

AND

ADOPT THE ADDENDUM TO SUPPLEMENTAL ENVIRONMENTAL IMPACT REPORT (SEIR) FOR PACIFIC COMMONS PROJECT CATELLUS DEVELOPMENT CORP. AS SHOWN ON EXHIBIT "C". (SEIR PLN2000-214, STATE CLEARINGHOUSE #8721715 & 96052016);

AND

FIND PLN2004-00142 IS IN CONFORMANCE WITH THE RELEVANT PROVISIONS CONTAINED IN THE CITY'S EXISTING GENERAL PLAN. THESE PROVISIONS INCLUDE THE DESIGNATIONS, GOALS AND POLICIES SET FORTH IN THE GENERAL PLAN'S LOCAL ECONOMY CHAPTER AS ENUMERATED WITHIN THE STAFF REPORT;

AND

APPROVE PLN2004-00142, AS SHOWN ON EXHIBIT "A", SUBJECT TO FINDINGS AND CONDITIONS ON EXHIBIT "B".

The motion carried by the following vote:

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| AYES: | 4 – Harrison, Lydon, Sharma, Weaver |
| NOES: | 1 – Wieckowski |
| ABSTAIN: | 0 |
| ABSENT: | 1 – King |
| RECUSE: | 1 – Natarajan |

- Item 4. REASONABLE ACCOMMODATION FOR THE DISABLED – Citywide – (PLN2004-00126)**
- to consider a city-initiated Zoning Text Amendment to amend applicable sections of Title VIII (Planning and Zoning), Chapter 2 (Zoning) of the Fremont Municipal Code to amend development standards provisions for the reasonable accommodation of persons with disabilities consistent with implementation of certain programs of the City's ~~certified~~ *General Plan* Housing Element.

Interim Planning Director Schwob stated that the Reasonable Accommodation Ordinance came about as a result of the Federal Fair Housing Act and had been on the books as a part of the zoning code since 1999. There were a number of requests that did not go to property rights of the adjoining properties, minor encroachments, such as handicapped ramps, etc., which could be approved without a full public hearing. This amendment would provide clarification and remove what the State felt was a constraint to providing housing.

Vice-Chairman Wieckowski expressed a concern about Exhibit B, Section 8-22919 that stated persons convicted of either distributing controlled substances or unlawfully manufacturing them would not be allowed in such a residence. This was not the wording of the original Fair Housing Act that passed by Congress in 1968. In his opinion, these were

punitive actions for people who had been convicted of crimes and had served their sentences. He would like to see this language removed because, if someone had been convicted of a crime, they had already spent their time in jail and should not be penalized by not having housing available to them. If the concern was that people in public housing would manufacture or distribute illegal drugs, the police had adequate laws to arrest people in either public or private housing. For example, a disabled person could have been convicted for possessing two marijuana cigarettes years before. He would support staff's recommendation if that section were removed.

Commissioner Harrison asked for staff's opinion concerning Vice-Chairperson Wieckowski's comments.

Assistant City Attorney Seto agreed that the Federal Fair Housing Act did not protect persons who had been convicted of these types of drug offenses. This provision was added in 1999 specifically to address that portion of the federal law. These people did not have the protected right to ask for this type of accommodation.

Commissioner Harrison asked if the City would be out of federal compliance if that section were removed.

Senior Deputy City Attorney Seto stated that the City would be more lenient, but would not be out of compliance, because private property owners would be asking for accommodations under this law. If public housing or other types of federally funded housing asked for accommodations, they would have to follow Federal law.

Commissioner Sharma noted a correction under Sec. 8-2185. Residential care facilities, special: "Special residential facilities shall ~~mean~~ mean any state authorized . . ." He would support the amendment the way it was written, but he was interested in the other Commissioner's opinions.

Commissioner Natarajan asked, regarding Exhibit B, Second page, Second paragraph, Bullet Number 3, if the building additions should be defined further. In her opinion, it could mean allowing two or four feet for a ramp or even adding an entire room.

Interim Planning Director Schwob replied that it would allow a landing or porch for accessibility accommodation, which would eliminate a room addition that could be used as an exercise room. He agreed that the wording could be clarified. She noticed that the EIA on page 3 said that the initial study conducted for the project evaluated the possibility of the effect on the environment. She asked if that meant that it was not subject to CEQA.

Interim Planning Director Schwob agreed that "initial study" should be removed.

Commissioner Lydon asked who would enforce the section that was of concern to Vice-Chairperson Wieckowski? If a potential tenant disputed the recommendations by the Police Department, how was something like that settled?

Interim Planning Director Schwob the only case processed under this ordinance was to allow for several homes for recovering substance users. The neighborhood community feared that people who would not normally be in the neighborhood would also be at the homes. This section was added to provide a comfort factor for the neighborhood and the community. Since these homes had been a private facility, an administrative process was created to allow Police Department review to make sure there were no tenants with convictions.

Assistant City Attorney Seto replied that Police Department had access to conviction records and it would be a potential tenant's responsibility to bring information forward that showed the criminal records were incorrect.

Commissioner Lydon asked if staff had an example of some kind of compromise between eliminating this section and leaving it as it was.

Interim Planning Director Schwob stated that staff was not prepared to give an example.

A discussion ensued regarding persons convicted of felonies versus misdemeanors. It was eventually agreed, because of time constraints, that the amendment would not be changed. However, in the future, the Planning Commission would revisit the section dealing with unlawful manufacture and distribution of controlled substances. It was also agreed to clarify the language concerning building additions under Section 8-2293.1, Subsection 3.

Commissioner Sharma agreed to the two additional recommendations.

Vice-Chairperson Wieckowski asked to make an alternative motion.

Chairperson Weaver decided to take the first motion. If it did not carry, she would entertain Vice-Chairperson Wieckowski's motion.

IT WAS MOVED (SHARMA/HARRISON) AND CARRIED BY THE FOLLOWING VOTE (5-1-0-1-0) THAT THE PLANNING COMMISSION HOLD PUBLIC HEARING;

AND

RECOMMEND THE CITY COUNCIL FIND THAT THE PROPOSED PROJECT IS EXEMPT FROM CEQA PER SECTION 15061(B)(3);

AND

FIND THE ZONING TEXT AMENDMENT IS IN CONFORMANCE WITH THE RELEVANT PROVISIONS CONTAINED IN THE CITY'S GENERAL PLAN. THESE PROVISIONS INCLUDE THE DESIGNATIONS, GOALS AND POLICIES SET FORTH IN THE GENERAL PLAN'S HOUSING ELEMENT CHAPTER AS DISCUSSED WITHIN THE STAFF REPORT;

AND

FIND THE PUBLIC NECESSITY, CONVENIENCE AND GENERAL WELFARE REQUIRE THE ADOPTION OF THE ZONING TEXT AMENDMENT PLN2004-00126 BECAUSE IT FURTHERS THE ACHIEVEMENT OF HOUSING ELEMENT POLICY BY ENHANCING HOUSING OPPORTUNITIES FOR PERSONS WITH DISABILITIES;

AND

RECOMMEND PLN2004-00126 TO THE CITY COUNCIL IN CONFORMANCE WITH EXHIBIT "A" (ZONING TEXT AMENDMENTS).

The motion carried by the following vote:

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| AYES: | 5 – Harrison, Lydon, Natarajan, Sharma, Weaver |
| NOES: | 1 – Wieckowski |
| ABSTAIN: | 0 |
| ABSENT: | 1 – King |
| RECUSE: | 0 |

MISCELLANEOUS ITEMS

Information from Commission and Staff:

- **Chairperson Weaver** asked if either or both of the items scheduled for the March 11th meeting could be put on consent.

Interim Planning Director Schwob replied that the Eggers Rezoning would probably go on consent, but he did not expect the Vista Grande item would go on consent.

Chairperson Weaver asked if the March 11th meeting was needed.

Interim Planning Director Schwob stated that the Vista Grande project should be heard, along with the presentation on Bay Street.

- Information from staff: Staff will report on matters of interest.

Interim Planning Director Schwob stated that information concerning the two items below was in the Commissioners' packets.

- Transmittal of the updated Public Facilities Element of the General Plan.
- Transmittal of Background Information on Industrial Moratorium.

Many businesses and assembly users had moved to the industrial areas because of lower rents and increased vacancy. However, concern had been expressed over general public safety, because some of the nearby industrial businesses used hazardous substances in their processes. Sometime in the spring, proposed revisions would come before the Commission to remove some of the heavy industrial users from the light industrial district, so that it could be more of a general purpose, industrial, recreation, religious facility area. Some areas must be reserved for the heavy industrial users but, for example, a daycare facility was not appropriate next to a heavy industrial facility.

Commissioner Natarajan asked if the City had received any requests for conversion of land to residential use, similar to what other Bay Area cities were facing.

Interim Planning Director Schwob replied that it had occurred in the Warm Springs Boulevard corridor, because residential was on one side of the street and restricted industrial uses were on the other side. It would be challenging. Some uses may have to be rendered nonconforming in the short term, so that the City would have a long-term, viable industrial district.

Interim Planning Director Schwob announced that William Meeker would be joining the City as the new Planning Director on March 1st.

Interim Planning Director Schwob stated that at the last City Council meeting, the City Council had a study session on the Warm Springs Specific Plan; the Second Unit Dwelling Ordinance was approved on consent; The Patel Residence appeal was upheld, but the applicant had agreed to additional concessions; Mission Villas was approved; and the Lincoln Street rezoning was approved.

- Information from Commission: Commission members may report on matters of interest.

Commissioner Sharma stated that the Handbook for the Rules and Procedures of the City Council was appropriate for use by the Planning Commission. For the record, he stated that he wanted separate rules and procedures to be created under which the Planning Commission would operate. He suggested this be scheduled for discussion during the Planning Commission retreat.

Commissioner Natarajan asked if there was something that could be used, rather than creating something new from scratch.

A discussion ensued about the various handbooks given to Commissioners that contained general information.

Interim Planning Director Schwob replied that the City code allowed the Planning Commission to adopt its own procedures and rules, as long as they were not in conflict with other parts of the Municipal Code.

Meeting adjourned at 8:15 p.m.

SUBMITTED BY:

APPROVED BY:

Alice Malotte
Recording Clerk

Jeff Schwob, Secretary
Planning Commission